

# **NEW HAMPSHIRE REAL ESTATE COMMISSION**

## **COMMISSION MEETING**

**NOVEMBER 16, 2004**

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, November 16, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:40 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Pauline Ikawa, Nancy LeRoy, Barbara Heath, Executive Director Beth Emmons, Investigator Ann Flanagan, and Education Assistant Fran West.

- I. Motion by Commissioner LeRoy, seconded by Commissioner Heath, to approve and accept the minutes of the Commission meeting held on October 26, 2004.

### **II. APPOINTMENTS**

8:30 a.m. - Equivalency Interviews - None

8:45 a.m. RANDALL F. HART appeared before the Commission to explain a previous legal incident prior to applying for an original broker's license. After review and discussion, and on motion by Commissioner Stephen, seconded by Commissioner LeRoy, the Commission unanimously decided to allow Mr. Hart to apply for a broker's license based on the fact that Mr. Hart met all legal requirements of the State for this legal incident and has had no further legal incidences.

9:00 a.m. FRANK TRULL appeared before the Commission to explain a previous legal incident prior to applying for an original salesperson's license. After review and discussion, and on motion by Commissioner Stephen, seconded by Commissioner Ikawa, the Commission tabled its decision until Mr. Trull submits to the Commission police reports on his legal incidences for review.

9:20 a.m. LILLIAN MONTALTO appeared before the Commission to show good cause for reinstatement of her lapsed broker's license as required by RSA 331-A:18, II. After review and discussion, the Commission unanimously approved the reinstatement of Ms. Montalto's license based on the facts presented and the fact that Ms. Montalto did not receive a renewal notice, pursuant to RSA 331-A:19.

9:25 a.m. ATTORNEY JOHN M. SULLIVAN of PretiFlaherty, appeared before the Commission on behalf of the NH Association of Realtors to present the NH Association of Realtors revised standard forms for review. After review and discussion of the forms presented, the Commission made requests for changes and suggestions of change to Attorney Sullivan. Attorney Sullivan will supply to the Commission a revised set of the standard forms outlining changes made.

III. **DISCUSSION**

ANN FLANAGAN, the Commission Investigator requested an opinion as to whether a misrepresentation exists if an agent working with a buyer knowingly advises omitting the contingency of the buyer needing to sell a house because they know the buyer will be denied financing without selling the house, even though this presents a misrepresentation to the seller that the buyer does not need to sell a house. After review and discussion, the Commission decided that if the agent working with the buyer knowingly advises omitting the contingency, it would be a misrepresentation to the seller.

JOCELYN LAVOIE of ERA The Masiello Group requested a clarification of the interpretation of the Attorney General's Office of RSA 331-A:26 XXIV and whether it is permissible to make payments back to buyers and sellers by licensed affinity groups in the following scenarios:

Scenario 1: Buyer or seller is a member of an affinity group (Lending Tree, USAA or others) which is licensed, therefore which can accept referral fees. A NH broker works with a buyer who was referred by such an affinity group, and a closing results. The broker had agreed to pay the affinity a referral fee, knowing that a portion of the referral fee would be given to the buyer in the form of a rebate. After the closing, the buyer is paid the rebate from this referral fee directly by the affinity. Is this allowable?

Scenario 2: Same situation, however instead of sending the full referral fee to the affinity, the broker gives a credit (the rebate) directly to the buyer on the settlement statement, and the agreed upon referral fee is reduced by that amount.

After review and discussion, the Commission determined that in Scenario 1, it is allowable for the agent to pay the referral fee to the affinity group, knowing that a portion of the referral fee would be given to the buyer in the form of a rebate. The Commission also determined that Scenario 2 is allowable under the Attorney General's interpretation of RSA 331-A:26 XXIV.

FRAN WEST, the Commission Education Assistant presented the following questions on pre-licensing courses for clarification:

Will distance learning course hours for the pre-licensing national material from another state be allowed for approved study?

When accepting pre-license national education from another state, should there be a time period limitation?

After review and discussion, the Commission decided that the same requirements of resident applicants will apply to non-resident applicants for pre-licensing education. A non-resident

applicant must have at least 30 hours of in classroom study and may have up to 10 hours of distance learning, but must have at least 40 hours of pre-licensing education. The time limitation for completing a pre-licensing course prior to examination shall be the same as it will be for a resident applicant, which will be 1 year prior to the date of examination. These requirements will be included in future rulemaking.

IV. **OTHER BUSINESS**

1. Tuesday, December 14, 2004, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2004-008**

Evaluator: Commissioner Heath

Determination: Should be heard, hearing to be scheduled.

(b) **FILE NO. 2004-010**

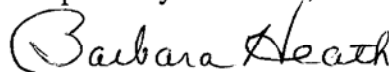
Evaluator: Commissioner Heath

Determination: Should be heard, hearing to be scheduled.

V. **ADJOURNMENT**

Motion by Commissioner LeRoy, seconded by Commissioner Heath to adjourn the meeting. Chairman Slattery adjourned the meeting at 11:55 a.m.

Respectfully submitted,



Barbara Heath  
Clerk